

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**EDWARD MCBRIDE,**

**Plaintiff,**

**v.**

**Civil No.**

**DEPARTMENT OF VETERANS AFFAIRS, and  
JARED HOWARD, Director of the Santa Fe  
National Cemetery,**

**Defendants.**

**COMPLAINT FOR INJUNCTIVE RELIEF**

**I. NATURE OF THE ACTION**

COMES NOW, Plaintiff Edward McBride, through undersigned counsel Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq.) and asserts the following civil causes of action. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552, for injunctive and other appropriate relief, seeking the release of agency records requested by Plaintiff from Defendants Department of Veterans Affairs and the Director of the Santa Fe National Cemetery, Jared Howard.

**II. JURISDICTION AND VENUE**

1. This court has subject matter jurisdiction and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), 552 (a)(6)(E), and 28 U.S.C. § 1331.

2. Venue in this court is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### **III. PARTIES**

3. Plaintiff Edward McBride is a resident of Sandoval County, New Mexico.

4. Defendant Jared Howard is the Director of the Santa Fe National Cemetery for U.S. Department of Veterans Affairs to whom the FOIA request was made that is in custody of the records requested.

5. Defendant U.S. Department of Veterans Affairs is an agency of the United States Government subject to request for the disclosure of public pursuant to 5 U.S.C. 552.

### **IV. FACTUAL ALLEGATIONS PERTINENT TO ALL COUNTS**

6. On December 3, 2018, Plaintiff received communication from Director Howard regarding allegations of complaints made against him, up to and including assault in possible violation of 28 C.F.R. § 1.218(a)(5) and New Mexico Law. Exhibit 1, Communication of Jared Howard.

7. In a November 1, 2018 telephone communication with Plaintiff, Director Howard indicated the presence of sworn statements from the alleged victim and two alleged witnesses. Ex. 1

8. Both the written communication and the telephone communication indicated a police report filed with the Santa Fe Police Department, and a possible Civil Restraining Order.

9. On March 11, 2019, Plaintiff requested, via a Freedom of Information Act Request, the following:

A copy of each and every sworn statement and/or witness statement, including any email communication, or other written communication about such statements, regarding the alleged incident occurring on September 7, 2018;

A copy of each and every document, statement, recording, hand written notes or information in any other format provided to the Santa Fe police department, or about information provided to the Santa Fe police department;

A copy of any and all notes, memorandum, email, voice messages, recordings, or any other documentation during the above requested time frame wherein Ed McBride, Edward McBride, or Pastor McBride is mentioned, referenced, or any other documentation regarding the alleged incident occurring September 7, 2018.

10. The request was sent to Director Jared Howard via facsimile and USPS.

11. To date, Defendants have not responded to Plaintiffs' FOIA requests, nor have they provided any responsive documents.

12. Defendant Howard had a responsibility to respond to the request or to forward the FOIA request to the proper records custodian.

13. Defendants have wrongfully failed to respond to the FOIA request

**V. COUNT I – VIOLATION OF THE FREEDOM OF INFORMATION ACT FOR FAILURE TO TIMELY RESPOND**

14. Plaintiff incorporates by reference, all preceding allegations as if fully set forth.

15. FOIA, 5 U.S.C. § 552(a)(6)(A)(i) requires any agency to which a FOIA request has been made to make a determination on the request within twenty

working days, and to immediately notify the person making the request of the determination and the agency's reasons for the determination

16. Under FOIA, Defendants were required to provide the records that Plaintiff requested.

17. Defendants have failed to provide the requested records as required by FOIA.

18. Under FOIA, Defendants were required to make a determination on Plaintiff's requests within twenty working days.

19. Defendant failed to make a determination on Plaintiff's requests, and more than 20 days have passed since Plaintiff submitted the FOIA request.

## **VI. CLAIM FOR RELIEF**

20. In violation of FOIA, Defendants have improperly withheld agency records from Plaintiff in violation within the meaning of 5 U.S.C. § 552(a)(4)(B), the Federal Records Act of 1950, as amended.

21. Plaintiff has been adversely affected by Defendants' failure to provide the required information under FOIA because without that information Plaintiff cannot rebut the charges against him, and cannot mitigate his banning from the National Cemetery.

22. 5 U.S.C. § 552(a)(6)(C) states in relevant part that: "Any person making a request to any agency for records... shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph."

23. FOIA gives this court jurisdiction to order Defendant to provide Plaintiff with the records requested pursuant to 5 U.S.C. § 552(a)(4)(B).

24. Defendants' unlawfully withholding agency records from Plaintiff is a violation of the FOIA.

25. This court may assess costs of litigation, including reasonable attorneys fees, against the United States if Plaintiff substantially prevails in this action pursuant to 5 U.S.C. § 552(a)(4)(E),

## **VII. REQUEST FOR RELIEF**

FOR THESE REASONS, Plaintiff respectfully requests that this court enter judgment providing the following relief:

- A. Declare that Defendants have improperly withheld agency records from Plaintiff by 1) failing to provide the requested information, and 2) failing to comply with the procedural time limits set forth by FOIA;
- B. Direct by injunction that the Defendant immediately provide Plaintiff with the records he has requested;
- C. Grant Plaintiff his costs of litigation, including reasonable attorney's fees as provided by the FOIA, 5 U.S.C. § 552(a)(4)(E), and;
- D. Provide such further relief as the Court deems just and proper to avoid similar violations of the FOIA by Defendants in response to future FOIA requests for agency records.

Respectfully submitted;

WESTERN AGRICULTURE, RESOURCE  
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

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